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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,238	09/24/2003	Dean W. Creighton	6123US	3563
30173	7590	04/04/2006	EXAMINER	
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 04/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,238

Applicant(s)

CREIGHTON ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim 45 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 1/26/06, applicant amends claim 45 to add the limitation "about .1-1% of carboxymethyl cellulose as adding at least a portion of the plant protein ingredient". This limitation is not supported by the original disclosure. While the specification discloses adding about .1-1% carboxymethyl cellulose, it is not added as a portion of the plant protein ingredient.

Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 45 is vague and indefinite. What does applicant mean by "carboxymethyl cellulose as adding at least a portion of the plant protein ingredient"? Cellulose is not a protein.

The new rejection is necessitated by amendment.

Claims 1-11, 14-25, 28-30, 37, 38 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe in view of Sander for the same reason set forth in the previous office action.

Claims 12,13, 26,27,31-36 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringe in view of Sander as applied to claims 12,13, 26,27,31-

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36 and 39-42 above, and further in view of Van Lengerich et al for the same reason set forth in the previous office action.

In the response filed 1/26/06, applicant essentially argues there is no reason to combine the references; however, applicant does not set forth any evidence or reason why the references cannot be combined. The claims are combining known ingredients in the art without any unexpected results. Sander discloses a high protein cereal; the cereal has a minimum of 20% protein. Sander also teaches other additives such as betaglucans, soy beans, inulin, FOS and dietary fibers can be added. Many of the additives disclosed by Sander are fiber materials in addition to the teaching of adding dietary fiber. Thus, the high protein cereal of Sander also contains fiber; this indicates that fiber and protein are totally compatible in a cereal product. Thus, it would have been obvious to one skilled in the art to add a high amount of protein to the Ringe cereal product when desiring a product having high fiber and protein content. Such product is more nutritious than either one of Ringe or Sander alone because it contains both high fiber and high protein. Adding ingredient for its known purpose would have been obvious to one skilled in the art. A combination of protein and fiber is suggested in the art because Sander discloses fiber additives can also be added to the high protein cereal. A 103 rejection must take into consideration the skill of one in the art and what would have been obvious to such person in view of the teaching of the prior art. Having the teaching of Sander and Ringe, it would have been obvious to one to make a cereal product containing both fiber and protein because such combination is taught in the prior art. Applicant's comment about the insoluble fiber content would be higher than

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the soluble fiber content is not understood because the claims recite the same amounts of insoluble and soluble fibers and the ratio can be 1:1.

Applicant's arguments filed 1/26/06 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 31, 2006

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700